THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.3918 of 1998

DATED: 13.06.2007

Between:

D.Mark and others. .. Petitioners.

And

A.P.Residential Educational Institution Society rep. by its Secretary, III Floor, Gagan Vihar, Nampally, Hyderabad, and others. .. Respondents

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.3918 of 1998

ORDER:

In this writ petition, the petitioners sought for a Writ of Mandamus to declare the action of the respondents in not paying the pay scales attached to the posts held by the petitioners from the respective dates of their regular appointments as was done in the case of petitioners in W.P.No.3903 of 1994 & batch, dated 25.09.1996, as illegal, arbitrary and unconstitutional, and for issuance of a consequential direction to the respondents to forthwith pay arrears of salary to the petitioners from the respective dates of their appointments.

2. In the affidavit filed in support of the writ petition, it is mentioned that the petitioner Nos. 1 to 9 and 11 were initially appointed on adhoc basis as Watchmen, Sweepers, Kitchen Helpers and Scavangers in the year 1983 and 1984 by the Principal, A.P. Residential Degree College, Nagarjunasagar, the second respondent. The petitioner No.12 was appointed as Sweeper on regular basis by the third respondent on 06.11.1987. The petitioner Nos. 13 and 14 were appointed on regular basis on 13.04.1984 by the third respondent. The Petitioner No.15 was also appointed as Helper by the third respondent on 01.12.1986.

It is further averred that in pursuance of the applications invited

on 03.12.1985 and 25.11.1986 from the eligible candidates for filling up the posts of Helper, Watchmen, Scavengers, Sweepers etc., petitioner Nos. 1 to 9 and 11 applied, and that Selection Committee conducted interviews on 15.02.1986, 28.02.1986, 04.03.1986, 03.03.1986 and 04.03.1986; that on the recommendations of the Selection Committee, respondent No.1 issued proceedings dated 14.11.1986 approving the selection of the said petitioners and thereupon respondent no.2 issued proceedings on 01.12.1986 appointing the said petitioners in the existing vacancies. The petitioners further averred that though they were regularly appointed, they were paid only Rs.238/- + allowances towards salary and thereby they were denied the pay scale attached to the posts in which they were appointed.

3. The Secretary of Andhra Pradesh Residential Educational Institutions Society filed a counter affidavit. It is stated therein that the petitioners 1 to 9 were appointed as Watchmen, Sweeper, Kitchen Helpers and Sanitary Workers in the year 1986, and petitioner No.11 was appointed in the year 1987 at Andhra Pradesh Residential Degree College, Nagarjunasagar, and that all the petitioners were appointed during 1984 to 1987 by the Principals of A.P.Residential Degree College and A.P.Residential Junior College, Nagarjunasagar, as Contingent employees and they are allowed the scale of Rs.238/- + D.A. fixed by the Government. It is further averred that as per the service and Recruitment Rules of the Society, the Principals of Residential Educational Institutions are competent authority to appoint persons to the posts of Non-Teaching Staff upto the cadre of L.D.C. under the Chairmanship of the District Selection Committee duly following the rules of reservation, and that therefore, the Selection

Committee conducted the interviews and appointed the petitioners into the institutions of respondent nos.2 and 3, and that they were appointed on regular basis with a scale of Rs.238/- + D.A.; that the Government issued G.O.Ms.No.9, Finance and Planning Department, dated 08.01.1981, for conversion of Full Time Contingent posts, which was in existence for a period of five years or more as on 01.04.1981 into regular Last Grade Service posts in the Pay Scales of Rs.290-425/- with effect from 01.04.1981, and that the said G.O. was not applicable to the petitioners, as they were appointed between 1984 to 1987, and that the petitioners come under the cadre of Full Time Contingent employees and not under the Last Grade Service, for which the regular pay scale is Rs.740-1150/-. It is further submitted that the first respondent sent proposals to the Government for its approval to allow minimum pay scale of Rs.740-1150/- to the Full Time Contingent employees, who were appointed from 1983 to 1987 and who completed five years of service as per the orders of the Government in G.O.Ms.No.344, and that the Government issued G.O.Ms.No.1413, Education (Prog.III) Department, dated 20.08.1993, accepting the proposals submitted by the first respondent for conversion of 157 Contingent posts into Last Grade Service posts, and that based on the said orders, all the Full Time Contingent employees, working in various schools under the management of the first respondent Society, were given the minimum Pay Scale of Rs.740-1150/- from the date of G.O. i.e., 20.08.1993. It is also submitted that petitioner Nos. 9 to 12 were given minimum pay scale of Rs.1375-2375/- as per the proposals accepted by the Government by converting 22 Full Time Contingent posts into Last Grade Service posts with effect from 31.03.1995.

4. Heard Sri A.Venkataramana, learned counsel appearing for the petitioners, and Sri K.Durga Prasad, learned Standing Counsel for the respondents.

5. Learned counsel for the petitioners submitted that though the petitioners were appointed following the selection made by a duly constituted Selection Committee on 13.04.1984, 01.12.1986 and 09.03.1987 respectively, there was no justification to deny them the regular pay scales attached to the posts, in which they were appointed. He relied upon a Division Bench judgment of this Court in **M.Sudarshan Reddy v. The Special Officer, A.P.Residential School (BC), Doulathabad-II, Medak District**, in W.P.No.3903 of 1994 & batch, dated 25.09.1996, in support of his contention that the petitioners are entitled to regular pay scale from the time of their regular appointments.

6. Learned Standing Counsel for the respondents submitted that, initially, the petitioners were appointed on regular basis with the scale of Rs.238/- + D.A. in respondent Nos.2 and 3 Institutions, and that, later, respondent No.1 submitted proposals to Government seeking permission to allow minimum pay scale of Rs.740-1150/- to the Full Time Contingent employees, who were appointed from 1983 to 1987 and completed five years of service as per the orders of the Government in G.O.Ms.No.344, and that the said proposals were accepted by the Government in G.O.Ms.No.1413, dated 20.08.1993. He, therefore, submits that from the said date onwards, the petitioner Nos. 1 to 8 and 13 to 15 are being paid the pay scale of Rs.740-1150/-, and later on, the posts held by petitioners 9 to 12 were also converted from Full Time Contingent posts into Last Grade Service posts with

effect from 31.03.1995, and that regular pay scale is being paid to them.

7. Having heard the respective submissions of the learned counsel, I am of the view that the petitioners are not entitled to the higher pay scale i.e., Rs.740-1150/- as revised to Rs.1375-2375/- from the date anterior to the date on which they are actually being paid by the respondents. A reading of the initial appointment orders, dated 13.04.1984, 09.03.1987 and 01.12.1986, clearly show that their appointment was in the scale of pay of Rs.238/- per month with permissible allowances. The petitioners accepted the said appointments. It is only later that proposals were sent for conversion of Contingent service posts into Last Grade Service posts, and from the time of acceptance of those proposals, the petitioners are being paid the regular pay scales. The petitioners did not deny the averment that for Contingent employees, no sanctioned pay scale is prescribed. I do not, therefore, see anything illegal on the part of the respondents in fixing the pay scale to the petitioners from the time of conversion of Contingent service into Last Grade Service by paying the pay scale attached to the said post. As regards the Division Bench judgment, on which reliance is placed by the learned counsel for the petitioners, the same may not advance the case of the petitioners for the reason that the direction contained in the said judgment is to the following effect:-

> "We have therefore no hesitation in allowing these writ petitions with a direction to the respondents to extend the benefit of pay-scales attached to the posts in which they are working and against which they have been appointed on regular basis from the dates on which they were regularized."

8. In my considered opinion, the Division Bench has not held that the petitioners therein were entitled to the regular pay scale attached to the Last Grade Services even before the conversion of posts. The learned Standing Counsel submitted that even in the cases covered by the said judgment, the petitioners therein were not paid the regular pay scale before the conversion, and the learned counsel for the petitioners has not denied this submission.

For the aforementioned reasons, I do not see any reason that the petitioners are entitled to the relief as sought for in the writ petition, and the writ petition is accordingly dismissed. No order as to costs.

_____

(C.V.NAGARJUNA REDDY,J)

Dt.13.06.2007
v v